

XAVIER BECERRA
Attorney General

State of California
DEPARTMENT OF JUSTICE



600 WEST BROADWAY, SUITE 1800
SAN DIEGO, CA 92101
P.O. BOX 85266
SAN DIEGO, CA 92186-5266

Public: (619) 738-9000
Facsimile: (619) 645-2012
E-Mail: Josh.Caplan@doj.ca.gov

July 15, 2020

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Daimler AG
c/o Stacie Fletcher
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036

Mercedes-Benz USA, LLC
c/o Stacie Fletcher
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036

Andrew Wheeler, Administrator
U.S. Environmental Protection Agency
Mail Code 1101A
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

John Busterud, Regional Administrator
U.S. Environmental Protection Agency
75 Hawthorne Street
San Francisco, CA 94105

RE: Notice of Violation and California's Intent to File Suit against Daimler AG and Mercedes-Benz USA, LLC Under the Clean Air Act, 42 U.S.C. § 7604(a)(1)

Dear Ms. Fletcher, Mr. Wheeler and Mr. Busterud:

We write on behalf of our client, the California Air Resources Board ("CARB"). As you know, CARB has been investigating Daimler AG and Mercedes-Benz USA, LLC (collectively, "Daimler") in connection with the certification, sale, and continued operation of certain model year 2009 to 2016 2.1L and 3.0L diesel powered vehicles in California in 52 different test groups (the "Subject Vehicles"). CARB has also been investigating Daimler's failure to report running changes to certain Subject Vehicles. Further, CARB and Daimler have been exploring a potential resolution of some or all of CARB's legal claims arising out of this investigation. CARB remains committed to that process.

As described below, this letter provides notice to Daimler and the U.S. Environmental Protection Agency ("EPA") of Daimler's violations of emission standards adopted pursuant to the Clean Air Act ("CAA") and California law, as required by the CAA, specifically 42 U.S.C. § 7604(b)(1) and 40 C.F.R. § 54.3(b). The People of the State of California, by and through

CARB (collectively, "CARB"), intend to file suit under 42 U.S.C. § 7604(a)(1) against Daimler and seek injunctive relief to remedy the CAA violations.¹

A. Name and Address of Persons Giving Notice

The People of the State of California, by and through CARB, represented by the California Attorney General's Office.

c/o Deputy Attorney General Joshua Caplan
California Department of Justice
Office of the Attorney General
600 West Broadway, Suite 1800
San Diego, CA 92101
Josh.Caplan@doj.ca.gov
(619) 738-9300

CARB is a public agency of the State of California within the California Environmental Protection Agency. Among other duties and responsibilities, CARB is charged with controlling motor vehicle emissions to address the serious air pollution problems they cause. To this end, CARB adopts and implements emission standards for motor vehicles. CARB has the authority to ensure that only motor vehicles that meet applicable emission standards, and that are certified by CARB through issuance of an Executive Order, are imported into, sold, and operated in California.

B. Applicable Standard

The LEV II exhaust emission standards, set forth in 13 C.C.R. § 1961, and the LEV III exhaust emission standards, set forth in 13 C.C.R. § 1961.2, are each applicable to certain Subject Vehicles as set forth in the applications for certification that Daimler submitted to CARB and the corresponding Executive Orders issued by CARB.

Pursuant to the Clean Air Act, CARB requested and obtained waivers of preemption from EPA to adopt and enforce the LEV II standards set forth in 13 C.C.R. § 1961 and the LEV III standards set forth in 13 C.C.R. § 1961.2. Additionally, effective July 18, 2016, EPA approved 13 C.C.R. § 1961 as part of a revision to the California State Implementation Plan. 40 C.F.R. § 52.220a; 81 Fed. Reg. 39424.

C. Person or Persons Responsible for the Violations

Daimler AG and Mercedes-Bens USA, LLC are responsible for the violations set forth in this notice.

¹ In addition to the claim under the CAA, California intends to allege claims for various forms of relief under California environmental laws.

D. Location of the Violations

The violations that are the subject of this notice took place and continue to take place throughout California.

E. Dates of the Violations

The violations that are the subject of this notice began in or around 2008 and continue to the present.

F. Description of the Violations

The CAA, specifically 42 U.S.C. § 7604(a), provides that “any person may commence a civil action on his own behalf (1) against any person . . . who is alleged to have violated . . . or to be in violation of (A) an emission standard or limitation . . . or (B) an order issued by the Administrator or a State with respect to such a standard or limitation.” California is a “person” for purposes of this provision. 42 U.S.C. § 7602(e).

The vehicles identified in Attachment “A” to this letter are subject to either the “LEV II” emission standards for Passenger Cars and Light-Duty Trucks set forth in 13 C.C.R. § 1961, or the “LEV III” emission standards for passenger cars and light-duty trucks set forth in 13 C.C.R. § 1961.2, and the OBD standards set forth in 13 C.C.R. §§ 1961.2 and 19685, as reflected in the applications for certifications submitted by Daimler and the corresponding Executive Orders issued by CARB. For MY 2014 and prior MY vehicles, manufacturers must, among other things, list all Auxiliary Emission Control Devices (“AECDs”) installed on their vehicles, including a justification for each AECD, the parameters each AECD senses and controls, a detailed justification of each AECD that results in a reduction in effectiveness of the emission control system, and a rationale for why each AECD is not a defeat device. (Cal. Code Regs., tit. 13, § 1961, subd. (d).) For MY 2015 and subsequent model year vehicles, manufacturers must, among other things, list all AECDs installed on their vehicles, including a justification for each AECD, and rationale for why each AECD is not a defeat device. (Cal. Code Regs., tit. 13, § 1961.2, subd. (d).) Manufacturers must also describe the OBD system and submit certain OBD testing data, to show that the vehicle complies with OBD monitoring requirements. (E.g., Cal. Code Regs., tit. 13, § 1968.2, subds. (h) & (i).) As stated above, EPA granted waivers of preemption for CARB to adopt and enforce these standards, and EPA subsequently approved the standards as part of the California State Implementation Plan.

Daimler imported, sold, attempted to sell, or caused to be offered for sale in California vehicles that may have failed to comply with the “LEV II,” “LEV III” and OBD emissions standards and related requirements when imported, offered for sale, or sold, and those vehicles may remain out of compliance with those standards. Daimler’s actions may constitute violations of the CAA, 42 U.S.C. § 7604(a)(1).

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As noted above, we hope to continue working with Daimler toward a negotiated resolution of any potential CAA claim, as well as other potential California claims. Please let us know if you would like to discuss these matters further.

Sincerely,



JOSHUA M. CAPLAN
Deputy Attorney General

For XAVIER BECERRA
Attorney General

Attorneys for the California Air Resources Board

Enclosure (Attachment "A")

cc:

Evan Belser, Acting Director
Air Enforcement Division
U.S. Environmental Protection Agency
Mail Code 2242A
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Ellen Peter, Chief Counsel
California Air Resources Board
1001 I Street
Sacramento, CA 95814

ATTACHMENT "A"

| Model Year | Model | Test Group |
|------------|---|--------------|
| 2009 | GL 320 Bluetec | 9MBXT03.0U2B |
| 2009 | ML 320 Bluetec/ R 320 Bluetec | 9MBXT03.0U2A |
| 2010 | Sprinter 3500 CDI | AMBXT03.0HD2 |
| 2010 | Sprinter 2500 CDI/ Sprinter 3500 CDI | AMBXT03.0HD1 |
| 2010 | GL 350 Bluetec | AMBXT03.0U2B |
| 2010 | ML 350 Bluetec/ R 350 Bluetec | AMBXT03.0U2A |
| 2011 | R 350 Bluetec 4MATIC/ ML 350 Bluetec 4MATIC | BMBXT03.0U2A |
| 2011 | Sprinter 2500 CDI/ Sprinter 3500 CDI | BMBXT03.0HD1 |
| 2011 | Sprinter 3500 CDI | BMBXT03.0HD2 |
| 2011 | GL 350 Bluetec 4MATIC | BMBXT03.0U2B |
| 2011 | E 350 Bluetec | BMBXV03.0U2B |
| 2012 | E 350 Bluetec | CMBXV03.0U2B |
| 2012 | ML 350 Bluetec 4MATIC | CMBXT03.0U2A |
| 2012 | S 350 Bluetec 4MATIC | CMBXV03.0U2A |
| 2012 | GL 350 Bluetec 4MATIC/ R 350 Bluetec 4MATIC | CMBXT03.0U2B |
| 2012 | Sprinter 3500 CDI/ | CMBXT03.0HD2 |
| 2012 | Sprinter 2500 CDI/ Sprinter 3500 CDI | CMBXT03.0HD1 |
| 2013 | Sprinter 3500 CDI | DMBXT03.0HD2 |
| 2013 | Sprinter 2500 CDI/ Sprinter 3500 CDI | DMBXT03.0HD1 |
| 2013 | S 350 Bluetec 4MATIC | DMBXV03.0U2A |

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|------|---|--------------|
| 2013 | GL 350 Bluetec 4MATIC/ ML 350 Bluetec 4MATIC | DMBXT03.0U2A |
| 2013 | GLK 250 Bluetec 4MATIC | DMBXT02.2U2A |
| 2013 | E 350 Bluetec | DMBXV03.0U2B |
| 2014 | Sprinter 3500 CDI/ Sprinter 2500 CDI | EMBXT02.2HD1 |
| 2014 | Sprinter 3500 CDI | EMBXT02.2HD2 |
| 2014 | Sprinter 3500 CDI/ Sprinter 2500 CDI | EMBXT03.0HD1 |
| 2014 | Sprinter 3500 CDI | EMBXT03.0HD2 |
| 2014 | GL 350 Bluetec 4MATIC/ ML 350 Bluetec 4MATIC | EMBXT03.0U2A |
| 2014 | E 250 Bluetec/ E 250 Bluetec 4MATIC/ GLK 250 Bluetec 4MATIC | EMBXJ02.2U2A |
| 2015 | Sprinter 3500 CDI Cargo Van/ Sprinter 3500 CDI RV | FMBXT02.1HD2 |
| 2015 | Sprinter 2500 CDI Cargo Van/ Sprinter 2500 CDI Coach/ Sprinter 3500 CDI Cargo Van | FMBXT02.1HD1 |
| 2015 | E 250 Bluetec/ E 250 Bluetec 4MATIC/ GLK 250 Bluetec 4MATIC | FMBXJ02.1U2A |
| 2015 | ML 250 Bluetec 4MATIC/ ML 250 Bluetec 4MATIC Base | FMBXT02.1U2A |
| 2015 | GL 350 Bluetec 4MATIC/ ML 350 Bluetec 4MATIC | FMBXT03.0U2A |
| 2015 | Sprinter 3500 CDI/ Sprinter 2500 CDI | FMBXT03.0HD1 |
| 2015 | Sprinter 3500 CD | FMBXT03.0HD2 |
| 2015 | Sprinter 2500 CDI 4x4 | FMBXT03.0HD3 |
| 2015 | Sprinter 3500 CDI 4x4 | FMBXT03.0HD4 |
| 2016 | Sprinter 3500 CDI | GMBXT02.1HD4 |

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|------|---|--------------|
| 2016 | Sprinter 2500 CDI/ Sprinter 3500 CDI | GMBXT02.1HD3 |
| 2016 | Sprinter 3500 CDI | GMBXT02.1HD2 |
| 2016 | Sprinter 2500 CDI/ Sprinter 3500 CDI | GMBXT02.1HD1 |
| 2016 | E 250 Bluetec/ E 250 Bluetec 4MATIC | GMBXV02.1U2B |
| 2016 | GLE 300D 4MATIC | GMBXT02.1U2A |
| 2016 | GL 350 Bluetec 4 MATIC/ GLE 350 D 4 MATIC/ GLE 350 D 4MATIC (coupe) | GMBXT03.0U2A |
| 2016 | Sprinter 3500 CDI | GMBXT03.0HD2 |
| 2016 | Sprinter 2500 CDI/ Sprinter 3500 CDI | GMBXT03.0HD1 |
| 2016 | Sprinter 3500 CDI 4x4 | GMBXT03.0HD4 |
| 2016 | Sprinter 2500 CDI 4x4 | GMBXT03.0HD3 |